Pension & Health Benefits Committee

California Public Employees' Retirement System

Agenda Item 5c - Revised

May 19, 2015

ITEM NAME: Senate Bill 671 (Hill) – Prescription Drugs: Biological Products

As Amended May 5, 2015

Sponsor: Author

PROGRAM: Legislation

ITEM TYPE: Action

RECOMMENDATION

Adopt an **Oppose Unless Amended** on Senate Bill (SB) 671 because it would impose a physician notification requirement on pharmacists when dispensing biosimilars approved by the Food and Drug Administration (FDA) as interchangeable with reference biological products. Under the federal Affordable Care Act (ACA), if a biosimilar is considered interchangeable by the FDA, it may be substituted by a pharmacist without intervention by the prescriber. Staff recommends elimination of the notification requirement.

EXECUTIVE SUMMARY

SB 671 allows a pharmacist filling a prescription order for a prescribed biological product to select an alternative biological product (commonly known as a "biosimilar") if it is established as interchangeable by the FDA, and the prescriber does not affirmatively indicate "Do not substitute" on the prescription order. It also requires the pharmacist to communicate to the prescriber the specific biological product provided to the patient, including the name of the biological product and the manufacturer, within five days following the dispensing of any biological product where there is both a reference product and an FDA-approved interchangeable product available for substitution, by entering the appropriate information in an interoperable electronic medical records system or record system accessible to the prescriber.

CalPERS Legislative and Policy Engagement Guidelines related to prescription drugs include supporting the development of a clear, efficient, and timely regulatory pathway for biosimilars and interchangeable biologics, and supporting proposals that will reduce the cost of prescription drugs while also maintaining appropriate quality of and access to brand name, generic, biosimilar, and interchangeable drugs. While the prescriber notification provisions of the current amended version of the bill represents an additional, unnecessary step that could cast doubt on the safety and efficacy of interchangeable biosimilars, discourage access to these lower cost substitutes and increase health care costs for California Public Employees' Retirement System

(CalPERS) members and employers; they are an improvement when compared to the notification provisions contained in prior legislation vetoed by the Governor.

STRATEGIC PLAN

This item supports CalPERS 2012-17 Strategic Plan Goal A to improve long-term pension and health benefit sustainability by ensuing high-quality, accessible, and affordable health benefits.

BACKGROUND

1. Biologic Drugs, Biosimilar Drugs, and Interchangeability

   Biological products are used to prevent, treat, or cure diseases and can include vaccines, blood and blood components, gene therapy, tissues, and proteins. Unlike most traditional, small-molecule prescription drugs that are made through chemical processes, biological products are generally made from human and/or animal materials. Biosimilars are biological products that are highly similar to a United States (U.S.) licensed reference biological product, notwithstanding minor differences in clinically inactive components, and for which there are no clinically meaningful differences between the biological product and the reference product in terms of the safety, purity, and potency. Interchangeability means that the biological product is biosimilar to the U.S.-licensed reference biological product and is expected to produce the same clinical result as the reference product in any given patient.

2. CalPERS Drug Costs

   In 2013, CalPERS spent more than $7.51 billion to purchase health benefits for 1.4 million active and retired state and local government public employees and their families. Prescription drugs accounted for about 22 percent, or more than $1.65 billion, of that amount. Specialty drugs, including biologics, make up a significant portion of CalPERS drug spending, as described below:

   - The number of participants using specialty medication has increased by 76 percent between 2011 and 2013, to 24,224 participants.
   - Specialty drugs comprised 0.7 percent of total drugs dispensed in 2013, but represented 22 percent of CalPERS total drug costs.
   - Total spending for specialty drugs exceeded $368 million in 2013, a 46 percent increase since 2011.
   - Both specialty and traditional drug utilization increased between 2011 and 2013, with specialty drug utilization increasing at a faster rate than traditional drugs (46.5 percent versus 18.6 percent). The cost for specialty drugs increased at a significantly higher rate than traditional drugs (46 percent versus 1 percent).

3. Existing Federal Law

   The ACA contains a provision establishing an abbreviated pathway for biological products that are demonstrated to be “biosimilar” to, or “interchangeable” with, an FDA-licensed biological product. This pathway is provided in the section of the

ACA known as the Biologics Price Competition and Innovation Act (BPCI Act). Under the BPCI Act, a biological product may be demonstrated to be "biosimilar" if data show that, among other things, the product is "highly similar" to an already-approved biological product.

If a biosimilar is considered to be "interchangeable" to an FDA-licensed biological product under the BPCI Act, it may be substituted for the reference product without the intervention of the health care provider who prescribed the reference product.

Currently, only one biosimilar product has been approved by the FDA. On March 6, 2015, the FDA approved Zarxio (filgrastim-sndz), manufactured by Sandoz, Inc., as a biosimilar of Amgen's Neupogen (filgrastim). Neupogen, which was approved in 1991, is used to help prevent infections in cancer patients receiving chemotherapy. The FDA approved Zarxio based on structural and functional characterization, animal study data, human pharmacokinetic and pharmacodynamics data, clinical immunogenicity data and other clinical safety and effectiveness data that demonstrated Zarxio is biosimilar to Neupogen. Because Zarxio is approved as a biosimilar, not as an interchangeable product, it cannot be automatically substituted for the reference product, Neupogen.

The FDA has yet to determine that a biosimilar is interchangeable with a U.S.-licensed reference biological product, and the timeline for approval of an interchangeable biological product is unknown. The last two sets of guidance issued by the FDA, March 2013 and February 2012 respectively, have been in draft form.

4. <u>Legislative Efforts in Other States</u>
   In 2013-14, legislation to allow for the substitution of FDA-approved interchangeable biosimilars was proposed in 23 states: Arizona, Arkansas, California, Colorado, Delaware, Florida, Georgia, Illinois, Indiana, Maryland, Massachusetts, Michigan, Mississippi, Nevada, New Jersey, North Dakota, Oregon, Pennsylvania, Texas, Utah, Vermont, Virginia, and Washington.

   Nine states-Virginia, Utah, Oregon, Florida, North Dakota, Indiana, Massachusetts, Colorado and Delaware – have enacted laws specifying the circumstances under which pharmacists could substitute biosimilars for biologics. Oregon, Utah, and Virginia included a physician notification requirement and sunset date on their legislation.

   This year, legislation is currently under consideration in 15 states: California, Georgia, Illinois, Maryland, Mississippi, New Jersey, North Carolina, Oklahoma, Pennsylvania, Rhode Island, Tennessee, Texas, Vermont, Virginia, and Washington.

5. Existing State Law Related to the Substitution of Generic Drugs
   Current state law generally allows the substitution of generic drugs for brand name drugs without requiring pharmacists to notify prescribers; however, the substitution of biological products is currently not addressed under California law. Current law allows pharmacists filling prescription orders for brand name drug products to substitute generic drugs for orders if the generic contains the same active chemical ingredients of equivalent strength and duration of therapy, subject to a patient notification and bottle labeling requirement, unless the prescriber specifies that a pharmacist may not substitute another drug product by either indicating on the form submitted for the filling of the prescription drug orders "Do not substitute" or words of similar meaning or selecting a box on the form marked "Do not substitute."

ANALYSIS

1. Proposed Changes
   Specifically, SB 671 would:
   - Establish a substitution process for biosimilars deemed interchangeable that has some similarities to current state law regarding substituting brand name drugs with generic drugs; however, unlike California Business and Professional Code Section 4073, a current law in California regarding generic drugs, SB 671 requires the extra step of physician notification.
   - Allow a pharmacist filling an order for a biological product to select a biosimilar if both the following the conditions are met:
     - Biosimilar is established by the FDA as interchangeable with the prescribed biological product.
     - Prescriber does not personally indicate "Do not substitute" or words of similar meaning.
   - Require the pharmacy, within five days following the dispensing any biological product where there is both a reference product and an FDA-approved interchangeable product available for substitution, to notify the prescriber of the name of the specific biological product and the name of its manufacturer, that was provided to the patient by entering the appropriate information in an interoperable electronic medical records system or record system accessible to the prescriber. The pharmacy can also communicate the information using facsimile, telephone, electronic transmission, or other prevailing means.
   - Require no communication if either of the following apply:
     - There is no FDA-approved interchangeable biological product
     - A refill prescription is not changed from the product dispensed on the prior filling of the prescription.
   - Prohibit substitution if prescriber indicates orally or in writing "do not substitute" but allows prescriber to check a "do not substitute" box and initial the box or checkmark, and allows prescriber to communicate "do not substitute" for prescriptions sent electronically.

- Allow substitution at the pharmacist's discretion but does not increase his or her liability for the substitution.
- Prohibit pharmacists from making a substitution unless the patient cost is the same or less than the prescribed product.
- Apply to all prescriptions, including those presented by or on behalf of persons receiving assistance from the federal government or Medi-Cal, as specified.
- Require the substitution of a biosimilar to be communicated to the patient when a selection is made.
- Require the Board of Pharmacy to maintain on its public website a link to the current list, if available, of biosimilars determined by the FDA to be interchangeable.
- Define biological product, biosimilar, interchangeable, and prescription.
- Specify that none of its provisions prohibit the administration of immunizations.
- Specify that none of its provisions prohibit a disability insurer or health care service plan from requiring prior authorization or imposing other appropriate utilization controls in approving coverage for a biological product.

2. Author's Intent
   Because current state law does not address the substitution of biological products, legislation is necessary to expand state substitution laws to include biosimilars. This bill would allow a pharmacist to substitute an interchangeable biosimilar for a prescribed biologic product when certain conditions are met.

   According to the author, "SB 671 updates California law so when the federal Food and Drug Administration (FDA) approves interchangeable biosimilars, California pharmacists can substitute those lower cost biosimilars for brand name biologics…On March 6th, the FDA approved the first biosimilar, (Zarxio) and there are at least four more applications in the approval pipeline. Therefore, it is essential that a bill be passed this year making clear the procedures for substitution."

3. Potential Impacts to the Future Use of Biosimilars
   SB 671 imposes additional requirements on pharmacists when dispensing specific FDA-approved biosimilars beyond what is currently required for generic drugs under state law and beyond what is required in the ACA's BPCI Act. The author claims his bill is necessary to update state law so that when the FDA approves interchangeable biosimilars, pharmacists can substitute for these potentially lower cost drugs. He states that biosimilars are not identical to reference drugs, as is the case with generics and that while the use of biologics is safe, a risk of an immune response from a biologic is much more significant than with generic pills.

Many generic drug companies and insurers characterize legislative efforts by the biotechnology industry in other states and SB 671 as an attempt to deter the use of biosimilars by undermining confidence in their safety, even before these products get to market. They believe these efforts attempt to thwart competition as lucrative biologics lose patent protection.

Since passage of the ACA, the FDA, the only U.S. regulatory body with the authority to determine interchangeability, has been establishing standards for licensure to ensure the safety and effectiveness of biosimilars when they go to market. The notification requirement may potentially be misinterpreted as a lack of confidence in the determination of the biologic as interchangeable and may hinder the uptake or acceptance of interchangeable biologics. While only one biosimilar has been approved, there are more in the approval pipeline.

By imposing additional requirements on pharmacists when they dispense a biosimilar that has been certified by the FDA as interchangeable, SB 671 could undermine patients' and health care providers' trust in these products. Suggesting biosimilars are inferior to the reference biologics and not safe may deter patients from using these lower-cost treatments.

4. Doctor Notification Requirement Could Have Unintended Consequences
SB 671 requires the pharmacist to notify the prescriber of the specific biological product provided to the patient, including the name of the biological product and its manufacturer within five days following the dispensing of any biological product where there is both a reference product and an FDA-approved interchangeable product available for substitution. Notification would occur regardless of whether any substitution of an interchangeable biologic product was made. Such a broad physician notification requirement could encourage doctors to check the "Do not substitute" box in a mistaken effort to avoid being inundated with notifications. Furthermore, doctors may develop a habit of just checking the "Do not substitute" box for all prescriptions which may go beyond biologics and negatively impact CalPERS ability to increase generic drug use. While CalPERS could implement stricter utilization requirements on prescriber, it could impact our members' health by making it harder for them to access the drugs they need.

Without the ability to access safe, effective, and less expensive biosimilar products, CalPERS may ultimately be forced to raise prescription drug co-payments or raise health care premiums, shifting the costs onto employers, members, and their families.

5. Potential Conflict With Federal Law
By requiring a pharmacy to notify the prescriber when a prescription order for a prescribed biological product is substituted with an interchangeable biosimilar, the bill may be inconsistent with the BPCI Act which provides that an interchangeable

biosimilar may be substituted for the reference product without the intervention of the health care provider who prescribed the reference product.

6. Prior Failure of Similar California Biosimilar Substitution Legislation
In 2013, SB 598 (Hill) passed both the Senate and Assembly but was vetoed by Governor Brown. It does not appear that the concerns expressed by the Governor in his veto message that follows, have yet been resolved.

> "Senate Bill 598 would effect two changes to our state's pharmacy law. First, it would allow interchangeable 'biosimilar' drugs to be substituted for biologic drugs, once these interchangeable drugs are approved by the federal Food and Drug Administration (FDA). This is a policy I strongly support."
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> "Second, it requires pharmacists to send notifications back to prescribers about which drug was dispensed. This requirement, which on its face looks reasonable, is for some reason highly controversial. Doctors with whom I have spoken would welcome this information. CalPERS and other large purchasers warn that the requirement itself would cast doubt on the safety and desirability of more cost-effective alternatives to biologics."
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> "The FDA, which has jurisdiction for approving all drugs, has not yet determined what standards will be required for biosimilars to meet the higher threshold for 'interchangeability.' Given this fact, to require physician notification at this point strikes me as premature."
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> "For these reasons, I am returning SB 598 without my signature."

BUDGET AND FISCAL IMPACTS

1. Benefit Costs
Unknown, but potentially large health benefit cost increases – Many in the health care industry estimate that, overall, the cost of biosimilars could be 20 to 30 percent less than their reference products. Increasing restrictions on dispensing interchangeable biosimilar products could prevent CalPERS from realizing significant health care cost savings, especially as the use of biologics increases.

   While the first biologic products are only now beginning to lose their patent protection, the development and manufacture of biosimilars is in its infancy and may not provide an interchangeable substitute for all biologic products manufactured. If even a fraction of CalPERS annual $368 million spend on specialty drugs (including biologic products) were reduced in the future by the substitution of biosimilars, the tens of millions of dollars in associated savings could potentially lower the rate of increase in member and employer premiums.

2. Administrative Costs
None.

BENEFITS/RISKS

1. Benefits of Bill Becoming Law
   - Allows for the substitution of biosimilar products designated as interchangeable.
   - According to the Alliance for Safe Biologic Medicines, these "measures are necessary to protect patient safety because biosimilars are not identical to the originals."

2. Risks of Bill Becoming Law
   - May impede the substitution of biosimilars designated as interchangeable that are estimated to cost 20 to 30 percent less than their reference products would result in missed cost savings.
   - Enacting state law before the FDA finalizes its regulations or guidance on biosimilars could lead to conflict or unnecessary requirements.

ATTACHMENTS

Attachment 1 – Legislative History
Attachment 2 – List of Support and Opposition

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